



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

June 18, 1957

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin, Texas

Opinion No. WW-160.

Re: Is the Comptroller authorized to issue warrant in the amount of \$300.00 for the month of May against the monies appropriated for the current biennium to the one pensioner affected by House Bill 100?

Dear Mr. Calvert:

Your request for an opinion reads as follows:

"House Bill No. 140 of the Fifty-fourth Legislature, the General Appropriation Bill for this biennium, recites, in part, as follows:

"'As much of the Confederate Pension Fund as may be necessary to pay Confederate pensions and mortuary claims is hereby appropriated and set aside to pay such pensions and mortuaries as provided by law.'

"This is the appropriation language for the payment of Confederate pensions for the current biennium.

"House Bill No. 100 of the Fifty-fifth Legislature became effective May 1, 1957. This House Bill amends Article 6221 of the Revised Civil Statutes and raises the monthly amount payable to the Confederate Pensioner from \$200.00 per month to \$300 per month. There is no appropriation made by House Bill No. 100 unless it can be construed that this raise in pension constitutes an appropriation. If it does constitute an appropriation, then the bill does not carry the certificate of this department as required by Section 49a of Article III of the State Constitution.

"There is only one pensioner affected by House Bill No. 100. He is a Confederate Pensioner approximately 113 years old.

"Am I authorized to issue warrant to this pensioner in the amount of \$300.00 for the month of May against the monies appropriated for the current biennium? If you hold that the current appropriation is not available for the payment of his \$300.00 pension warrant for the month of May, then am I authorized to issue him a pension warrant for \$200.00 against said appropriation for the month of May?"

House Bill No. 140, Acts of the 54th Legislature, ch. 519, p. 1421 (General Appropriation Bill), provides as follows:

"For the Years Ending	
August 31,	August 31,
1956	1957

"As much of the Confederate Pension Fund as may be necessary to pay Confederate pensions and mortuary claims is hereby appropriated and set aside to pay such pensions and mortuaries as provided by law.

"The sum of such amounts is estimated to be	\$ 700,000	\$ 700,000"
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At the time this appropriation was made Article 6221, Vernon's Civil Statutes, provided:

"On the first day of each calendar month the Comptroller shall pay to each married Confederate Veteran who is living with his wife, a pension of Two Hundred Dollars (\$200) per month for as long as they both may live, and after the death of either party, then the said veteran, or his widow still living, shall only draw an amount equal to other veterans or their widows. To each veteran now unmarried, or a widower, who is drawing a pension, or whose application may hereafter be approved, shall be paid the sum of One Hundred Dollars (\$100) per month for each year. To each widow who is now drawing a pension, or whose application may hereafter be approved, shall be paid

the sum of One Hundred Dollars (\$100) per month for each year; provided that any widow who has been granted a pension, and who is thereafter admitted as an inmate of the Confederate Home of this State, shall thereafter be paid the sum of Twenty-five Dollars (\$25) per month, so long as she shall remain an inmate of such home. All pensions shall begin on the first day of the calendar month following the approval of the application."

Therefore, at the time of the enactment of House Bill No. 140 of the 54th Legislature the payment to the pensioner involved in your request was limited to \$200.00 per month.

Section 44, Article III of the Constitution of Texas provides:

"The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law." (Emphasis added)

This provision has been construed by the courts of this State to mean that the Legislature cannot appropriate State money to any individual "unless at the very time appropriation is made there is already in force some valid law constituting the claim the appropriation is made to pay a legal and valid obligation of the State." Austin National Bank v. Sheppard, 123 Tex. 272, 71 S.W.2d 242 (1934). See also Fort Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S.W.2d 660(1935); State v. Steck Company, 236 S.W.2d 866, Tex.Civ.App. (1951, error ref.); Attorney General's Opinion WW-96 (1957).

Article 6221 was amended by House Bill No. 100 of the 55th Legislature which became effective May 1, 1957. This amendment raised the amount of pension that may be paid the pensioner involved in your request to \$300.00 per month, but failed to

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contain any appropriation for the increase payment of pension provided for in House Bill No. 100.

According to your request, the language quoted above in House Bill 140 of the 54th Legislature is contained in the General Appropriation Bill for the biennium beginning September 1, 1957.

Since Article 6221, as amended by House Bill 100, authorizes the payment of \$300.00 per month to the pensioner involved in your request, it is our opinion that the sum of \$300.00 per month may be paid beginning September 1, 1957. You may continue to pay him \$200.00 per month out of moneys appropriated in House Bill 140 of the 54th Legislature until September 1, 1957. The pensioner will have a claim for \$100.00 per month from May 1, 1957, to September 1, 1957, since the pre-existing law creates a claim for the increase in pension for this period of time.

#### SUMMARY

The Comptroller of Public Accounts is not authorized to issue a warrant for the increase of the amount of pension authorized to be paid under Article 6221, V.C.S., as amended by House Bill 100 of the 55th Legislature, until September 1, 1957, since House Bill 100 did not contain an appropriation to cover such increase in pension. He may, however, continue to pay the pensioner the sum of \$200.00 per month until September 1, 1957, and the sum of \$300.00 per month thereafter, and the pensioner will have a claim for the additional \$100.00 per month for the period of time beginning May 1, 1957, and ending August 31, 1957.

Very truly yours,

WILL WILSON  
Attorney General of Texas

By *John Reeves*  
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JR:jl:wb

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APPROVED:

OPINION COMMITTEE:

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